

MICHAEL J. GARCIA

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Southern District of New York
Attorney for Defendant

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---------------------------|---|-------------------------|
| ----- | X | |
| ROSA V. ESTRADA, | : | |
| | : | 07 Civ. 8424 (NRB)(RLE) |
| Plaintiff, | : | ECF Case |
| | : | |
| -against- | : | |
| | : | |
| UNITED STATES OF AMERICA, | : | <u>ANSWER</u> |
| | : | |
| Defendant. | : | |
| | : | |
| | : | |
| ----- | X | |

Defendant, the United States of America (the “Government”), by its attorney Michael J. Garcia, United States Attorney for the Southern District of New York, answers the complaint on information and belief as follows:

1. The Government neither admits nor denies the allegations in paragraph 1 because they are statements of jurisdiction and conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, the Government denies knowledge or information sufficient to form a belief as to the truth of the allegations.

2. The Government denies knowledge or information sufficient to form a belief as to Plaintiff's place of residence, and neither admits nor denies the remaining allegations in paragraph 2 because they are statements of venue and conclusions of law to which no response is required.
3. The Government admits that the post office located at 558 Grand Concourse, Bronx, New York is owned by the United States Postal Service, which is an independent establishment of the Executive Branch of the United States of America.
4. The Government admits the allegations in paragraph 4.
5. The Government admits the allegations in paragraph 5.
6. The Government admits the allegations in paragraph 6.
7. The Government admits the allegations in paragraph 7.
8. The Government neither admits nor denies the allegations in paragraph 8 because they are conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, the Government denies the allegations in paragraph 8.
9. The Government denies the allegations in paragraph 9, but avers that Plaintiff reported that she fell on the front steps of the post office on March 7, 2007.
10. The Government denies the allegations in paragraph 10.
11. The Government denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.
12. The Government denies knowledge or information sufficient to form a belief as

to the truth of the allegations in paragraph 12, but avers that Plaintiff's administrative claim was received by the United States Postal Service on May 4, 2007.

13. The Government denies the allegations in paragraph 13, but avers that Plaintiff's administrative claim was denied by letter dated July 20, 2007 and sent to Plaintiff's counsel via certified mail.
14. The three paragraphs in the complaint following "Wherefore" contain Plaintiff's prayer for relief, to which no response is required.

DEFENSES

FIRST DEFENSE

15. Neither the Government nor any of its agents or employees were negligent in any manner nor violated any duty of care in regard to this matter.

SECOND DEFENSE

16. The injuries and damages alleged in the complaint were not proximately caused by a negligent or wrongful act or omission of the Government or any agent or employee of the Government.

THIRD DEFENSE

17. Neither the Government nor any of its agents or employees had actual or constructive notice of the matters alleged in the complaint.

FOURTH DEFENSE

18. The injuries and damages alleged in the complaint were caused in whole or in part by the culpable conduct by others, known or unknown, over whom the

Government exercised no control.

FIFTH DEFENSE

19. Plaintiff had knowledge of and voluntarily assumed the risks incident to the matters alleged in the complaint. The injuries alleged in the complaint were caused by and arose out of such risks.

SIXTH DEFENSE

20. Any and all risks, hazards, defects, and/or dangers alleged were of an open, obvious, and apparent nature and were or should have been known to Plaintiff.

SEVENTH DEFENSE

21. In the event that the Government is found to be negligent, which negligence it denies, Plaintiff's own negligence contributed to causing the alleged damages and any recovery must be proportionately reduced.

EIGHTH DEFENSE

22. Plaintiff was guilty of culpable conduct in total diminution of Plaintiff's claim for damages.

NINTH DEFENSE

23. Plaintiff's claims and demands for damages are subject to and limited by the Federal Tort Claims Act, 28 U.S.C. § 2671, et. seq.

TENTH DEFENSE

24. Plaintiff's recovery, if any, must be reduced pursuant to the collateral source statute, N.Y. Civil Practice Law § 4545(c).

WHEREFORE, the Government demands judgment dismissing the complaint and granting such other and further relief as this Court deems proper, including its costs and disbursements.

Dated: New York, New York
March 4, 2008

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Defendant United
States of America

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Bronx, New York 10467

CERTIFICATE OF SERVICE

I, Tomoko Onozawa, an Assistant United States Attorney for the Southern District of New York, hereby certify that on March 4, 2008, I caused a copy of the foregoing Answer to be served upon Plaintiff via First Class Mail to the following address:

Mark B. Rubin, Esq.
3413 White Plains Road
Bronx, New York 10467

Dated: New York, New York
March 4, 2008

/s/ Tomoko Onozawa
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